



Office of the Attorney General
State of Texas

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ATTORNEY GENERAL

October 26, 1992

Mr. Mike Driscoll
Harris County Attorney
1001 Preston, Suite 634
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OR92-276

Dear Mr. Driscoll:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 16960.

You have received a request for information relating to bid proposals submitted for travel services for Harris County (the "county"). Specifically, the requestor seeks "the bid proposals submitted by the unsuccessful bidders for travel services for Harris County." You claim that the requested information is excepted from required public disclosure by sections 3(a)(4) and 3(a)(10) of the Open Records Act.

Pursuant to section 7(c) of the act, we have notified the third parties whose proprietary interests may be compromised by disclosure of the requested information. In response, we have received letters from Supertravel and Lifeco Services Corporation ("Lifeco"). Supertravel claims that some of the information it submitted to the county in response to the request for bid is a "trade secret" within the meaning of section 3(a)(10). Lifeco contends that all of the information it submitted to the county in response to the request for bid is a "trade secret" and is thus excepted from required public disclosure under section 3(a)(10) of the Open Records Act.

Section 3(a)(4) excepts from required public disclosure "information which, if released, would give advantage to competitors or bidders." The purpose of section 3(a)(4) is to protect governmental interests in commercial transactions. Open Records Decision No. 593 (1991); 541 (1990). The county does not indicate how the requested information relates to a competitive bidding situation or to a commercial

transaction to which the county is party. Accordingly, the section 3(a)(4) exception may not be properly invoked.

Section 3(a)(10) excepts from required public disclosure two types of information: (1) trade secrets, and (2) commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision.¹ Both Supertravel and Lifeco claim that all or some of the requested information constitutes a trade secret. The Texas Supreme Court has adopted the definition of trade secret from the Restatement of Torts, section 757, which holds a trade secret to be

any formula, pattern, device or compilation of information which is used in one's business, and *which gives him an opportunity to obtain an advantage over competitors who do not know or use it*. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. [Emphasis added.]

Hyde Corp. v. Huffines, 314 S.W.2d 763, 776 (Tex.), *cert. denied*, 358 U.S. 898 (1958); *see also* Open Records Decision No. 552 (1990) (copy enclosed) at 2. The Restatement lists six factors to be considered in determining whether information constitutes a trade secret:

- (1) the extent to which the information is known outside of [the company];
- (2) the extent to which it is known by employees and others involved in [the company's] business;
- (3) the extent of measures taken by [the company] to guard the secrecy of the information;

¹Because neither the county, Lifeco nor Supertravel claim that any of the requested information is commercial or financial information and privileged or confidential by statute or judicial decision, we limit our discussion here to whether any of the requested information constitutes a trade secret within the meaning of section 3(a)(10).

- (4) the value of the information to [the company] and [its] competitors;
- (5) the amount of effort or money expended by [the company] in developing the information;
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757, cmt. b (1939). These factors are indicia of whether information constitutes a trade secret; depending on the information being considered, one factor alone may be indication of a trade secret. *See* Open Records Decision No. 552 at 3.

Supertravel asserts that the portions of its bid proposal titled Background Information, Guaranteed Cash Discounts, Basic Information, Override Agreement, Client List, and Market Samples (pages 1, 3, 10, 16-22) constitute "trade secrets." In support of its section 3(a)(10) claim, Supertravel advises us that these materials include "client lists, financial information such as details of sales, marketing strategies, and details concerning the confidential relationship with suppliers." Supertravel advises us that the customer list is known only to the company's senior executives, that each location of the company maintains a separate customer list unknown to the other company locations, and that employees permitted access to customer list information must return all copies of such information on termination. In addition, Supertravel advises us that each employee is informed that the identity of the company's customers is confidential. Moreover, details of contracts with customers and business volume information is maintained confidential in each company location and is known only to the management and a limited number of accounting personnel. Finally, Supertravel claims that the information for which it claims the section 3(a)(10) exception was acquired after years of effort and at great cost to the company and could not be acquired or duplicated by competitors.

We have considered Supertravel's arguments and examined the documents submitted to us for review. Supertravel has only made a *prima facie* case for establishing that information revealing its customers is a trade secret. The requestor has not rebutted Supertravel's showing. *See* Open Records Decision No. 552. We have marked the information on page 10 of the proposal that reveals Supertravel's customers. This information may be withheld from required public disclosure under section 3(a)(10) of the Open Records Act. Supertravel has not

made a *prima facie* case for establishing that the remaining information, including the statements describing briefly its agreements with suppliers, constitutes a trade secret. Accordingly, that information may not be withheld from required public disclosure under section 3(a)(10) and must be released.

Lifeco, however, has not demonstrated a *prima facie* case for any of the information for which it seeks trade secret protection. Lifeco's argument for nondisclosure merely restates the six factors and does not explain how or why any of the factors apply to the requested information. Thus, Lifeco has failed to demonstrate how the requested information constitutes a trade secret. *See generally* Open Records Decision No. 319 (1982) at 3 (information relating to organization and personnel, references, and pricing generally not excepted as a trade secret). We conclude, therefore, that the information submitted by Lifeco to the county in response to the request for proposal may not be withheld from required public disclosure under section 3(a)(10) of the Open Records Act and must be released in its entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-276.

Yours very truly,



Celeste A. Baker
Assistant Attorney General
Opinion Committee

CAB/GCK/lmm

Enclosure: Open Records Decision No. 552

Ref.: ID#s 16960; 17218
ID#s 17257; 17088
ID# 17498

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